

## TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions of Purchase (these "Terms") apply when referenced by any purchase order or other documentation of Servo Kinetics, Inc., a Michigan Corporation ("Servo Kinetics").

**1. Offer; Acceptance; Exclusive Terms.** Each purchase order issued by Servo Kinetics ("Order"), referencing these Terms, is an offer to Seller for the purchase of goods or services ("Supplies") and includes and is governed by these Terms. The Order supersedes all prior agreements, orders, quotations, proposals and other communications regarding the goods or services covered by the Order, except that a signed prior agreement (such as a Non-Disclosure Agreement) will continue to apply to the extent not directly in conflict with the Order. Any other modification of these Terms must be expressly stated in the Order. The Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior proposal, but only to the extent that the description or specifications of Seller do not conflict with the description and specifications in the Order. Seller accepts these Terms and forms a contract by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. The Order is limited to and conditional upon Seller's acceptance of these Terms exclusively. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise, are unacceptable to Servo Kinetics, are expressly rejected by Servo Kinetics, and will not become part of the Order. Each Order can be modified only under Section 36.

**2. Time Period of Order.** Subject to Servo Kinetics' termination rights, the agreement formed by the Order is binding on the parties for one year from the date the Order is transmitted to Seller or, if an expiration date is stated in the Order, until that date. Subject to Servo Kinetics' termination rights, the Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Order not be renewed.

**3. Quantities; Delivery.** Unless expressly stated on the face of the Order, Servo Kinetics is not required to purchase Supplies exclusively from Seller; and Servo Kinetics is required to purchase no more Supplies than those quantities identified in the Order. Servo Kinetics may require Seller to participate in electronic data interchange or similar inventory management program, at Seller's expense, for notification of Orders, shipping confirmation and other information. Servo Kinetics may purchase additional quantities of the listed Supplies using additional Orders. Unless otherwise agreed in writing by Servo Kinetics, the risk of loss passes from Seller to Servo Kinetics upon delivery to Servo Kinetics' designated facility. Time and quantities are of the essence under the Order. Seller agrees to 100% on-time delivery of the quantities and at the times specified by Servo Kinetics, as stated in the Order, except as otherwise agreed in writing by the parties. Servo Kinetics may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which entitles Seller to modify the price for Supplies. Servo Kinetics is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries.

**4. Invoicing and Pricing; Premium Freight.** Except as otherwise expressly stated in the Order, the price of Supplies includes storage, handling, packaging, shipping and all other expenses and charges of Seller. Incoterms 2000 will apply to all shipments except those entirely within the USA. All international shipments will be delivered D.D.P. to the destination specified in the Order and otherwise in accordance with the Order. All shipments entirely within the USA, will be delivered FOB to the destination specified in the Order and otherwise in accordance with the Order. All invoices for the Supplies must reference the Order number, amendment or release number, Servo Kinetics' part number, Seller's part number where

applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by Servo Kinetics. Servo Kinetics will pay proper invoices complying with all of the terms of the Order. The total price also includes all duties and taxes except for any governmentally imposed value added tax (VAT), which must be shown separately on Seller's invoice for each shipment. Servo Kinetics is not responsible for any business activity taxes, payroll taxes or taxes on Seller's income or assets. Seller will pay all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed delivery dates due to its own acts or omissions. Seller will pay any costs incurred by Servo Kinetics, including costs charged by Servo Kinetics' customer(s) to Servo Kinetics, as a result of Seller's failure to comply with shipping or delivery requirements.

**5. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions.** Seller will: (a) properly pack, mark, and ship Supplies according to the requirements of Servo Kinetics, the involved carriers and the country of destination; (b) route the shipments according to Servo Kinetics' instructions; (c) label or tag each package according to Servo Kinetics' instructions; (d) provide papers with each shipment showing the Order number, amendment or release number, Servo Kinetics' part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (e) promptly forward the original bill of lading or other shipment receipt for each shipment according to Servo Kinetics' instructions and carrier requirements. Seller will promptly provide Servo Kinetics with the following information in the form requested by Servo Kinetics: (i) a list of all ingredients and materials in Supplies; (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients. Before and at the time Supplies are shipped, Seller will give Servo Kinetics sufficient warning in writing (including appropriate labels on all Supplies, containers, and packing, including, without limitation, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Servo Kinetics, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing. Seller agrees to comply with all national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including without limitation the U.S. Toxic Substances Control Act. Seller will reimburse Servo Kinetics for any expenses incurred as a result of improper packing, marking, routing, or shipping.

**6. Customs; Related Matters.** Credits or benefits resulting from the Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Servo Kinetics. Seller will provide all information and certificates (including NAFTA Certificates of Origin) necessary to permit Servo Kinetics (or Servo Kinetics' customers) to receive these benefits or credits. Seller agrees to fulfill any customs- or NAFTA-related obligations, origin marking or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Supplies are Seller's responsibility unless otherwise stated in the Order, in which case Seller will provide the information necessary to enable Servo Kinetics to obtain the licenses or authorizations. Seller will promptly notify Servo Kinetics in writing of any material or components used by Seller in filling the Order that Seller purchases in a country other than the country in which the Supplies are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Servo Kinetics of any material or components imported into the country of origin and any duty included in the Supplies' purchase price. If Supplies are manufactured in a country other than the country in which Supplies are delivered, Seller will mark Supplies "Made in [country of origin]." Seller will provide to Servo Kinetics and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of Supplies into the country in which Supplies are delivered. Seller warrants that any information that is supplied to Servo Kinetics about the import or export of Supplies is true and that all

sales covered by the Order will be made at not less than fair value under the anti-dumping laws of the countries to which the Supplies are exported.

**7. Inspection; Non-Conforming Goods/Services; Audit.** Servo Kinetics may enter Seller's facility to inspect the facility, Supplies, materials, and any of Servo Kinetics' property related to the Order. Servo Kinetics' inspection of Supplies, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Servo Kinetics' acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in the Order releases Seller from the obligation of testing, inspection and quality control. If defective Supplies are shipped to and rejected by Servo Kinetics, the quantities under the Order may be reduced at Servo Kinetics option. In addition to other remedies available to Servo Kinetics: (i) Seller agrees to accept return, at Seller's risk and expense at full invoice price, plus transportation charges, and to replace defective Supplies as Servo Kinetics deems necessary; (ii) Servo Kinetics may have corrected at any time prior to shipment from Servo Kinetics' plant Supplies that fail to meet the requirements of the Order; or (iii) Seller will reimburse Servo Kinetics for all reasonable expenses that result from any rejection or correction of defective Supplies. Seller will document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. Payment for nonconforming Supplies is not an acceptance, does not limit or impair Servo Kinetics' right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. Upon reasonable notice to Seller, either Servo Kinetics or its direct or indirect customers may conduct a routine audit at Seller's production facility for the purpose of quality, cost or delivery verification. Seller will ensure that the terms of its contracts with its subcontractors provide Servo Kinetics and its customers with all of the rights specified in this Section.

**8. Payment.** Invoices for tooling or capital equipment must be issued only as approved, as provided in the Order. Servo Kinetics may withhold payment pending receipt of evidence, in the form and detail requested by Servo Kinetics, of the absence of any liens, encumbrances, or claims on Supplies provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Servo Kinetics.

**9. Changes.** Servo Kinetics reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of Supplies. Servo Kinetics also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. Servo Kinetics may also direct the supply of raw materials from itself or from third parties. Seller will promptly make any such requested change. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Servo Kinetics of its request in writing within ten days after receiving notice of the change. Servo Kinetics can request additional documentation from Seller relating to any change in specifications, price or time for performance. Seller will not make any change in the Supplies' design, specifications, processing, packing, marking, shipping, price or date or place of delivery except at Servo Kinetics' written instruction or with Servo Kinetics' written approval.

**10. Warranties.** Seller expressly warrants and guarantees to Servo Kinetics, to Servo Kinetics' successors, assigns and customers, that all Supplies delivered to Servo Kinetics will: (a) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by Servo Kinetics; (b) conform to all applicable laws, orders, regulations and standards in countries where Supplies or vehicles or other products incorporating Supplies are to be sold; (c) be merchantable and free of defects in design, materials and workmanship; (d) be selected, designed, manufactured and assembled by Seller based upon Servo Kinetics' stated use and be fit and sufficient for the purposes intended by Servo Kinetics; and (e) be free and clear of all liens and encumbrances (including, but not limited to, mechanic's

liens), in any way and Servo Kinetics may require Seller to provide a satisfactory release of liens as a condition of final payment. Seller further warrants that all Supplies will have at least 75% of its shelf life remaining. The warranty period is the longest of: (i) one year from the date Servo Kinetics accepts the Supplies; (ii) the warranty period provided by applicable law; or (iii) the warranty period offered by Servo Kinetics or Servo Kinetics' customer to end-users for goods incorporating the Supplies. For all services, Seller further warrants that its work will be performed in a professional and workmanlike manner, consistent with all standards and specifications agreed on with Servo Kinetics and otherwise consistent with industry standards. Seller will immediately notify Servo Kinetics in writing when it becomes aware of any ingredient, component, design or defect in Supplies that is or may become harmful to persons or property. Servo Kinetics' approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties.

**11. Supplier Quality and Development.** Seller will promote continuous quality improvement in the manufacture, production, and distribution of the Supplies. The Seller will comply with any quality assurances processes, inspections, and standards specified by Servo Kinetics. These standards may include, but are not limited to, Servo Kinetics' quality assurance program. Seller further agrees to maintain adequate authenticated inspection and test reports, affidavits, certifications or other such documents which relate to work performed under the Order. Such records, data, reports, and other documentation shall be made available to Servo Kinetics and its customers upon request. In the event of any discrepancy between any part of the above programs or standards and an express provision of these Terms, these Terms will control. Seller, or any of its assignees or delegates, agrees to quality inspections by Servo Kinetics' Industrial Quality Inspector at any time as he deems necessary.

**12. Remedies.** The rights and remedies reserved to Servo Kinetics in the Order will be cumulative with and in addition to all other or legal or equitable remedies. Seller will reimburse Servo Kinetics for any incidental or consequential damages caused by Seller's breach or by nonconforming Supplies, including without limitation costs, expenses and losses incurred directly or indirectly by Servo Kinetics or its customer(s): (a) in inspecting, sorting, repairing or replacing the nonconforming Supplies; (b) resulting from production interruptions; (c) conducting recall campaigns or other corrective service actions; or (d) resulting from personal injury (including death) or property damage caused by the nonconforming Supplies. Consequential damages include reasonable professional, expert, and attorney fees incurred by Servo Kinetics. If requested by Servo Kinetics, Seller will enter into a separate agreement for the administration or processing of warranty charge-backs for nonconforming Supplies, and will participate in and comply with warranty reduction or related programs as directed by Servo Kinetics that relate to the Supplies. In any action brought by Servo Kinetics to enforce Seller's obligation to produce and deliver Supplies under the Order, the parties agree that Servo Kinetics does not have an adequate remedy at law and Servo Kinetics is entitled to specific performance of Seller's obligations under the Order.

**13. Compliance with Laws; Ethics.** Seller, and any Supplies supplied by Seller, will comply with all applicable laws, including rules, regulations, orders, conventions, ordinances and standards, that relate to the manufacture, labeling, transport, import, export, licensing, approval or certification of the Supplies, including laws relating to environmental matters, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety. The Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination.

**14. Customer Requirements.** As directed by Servo Kinetics in writing, Seller agrees to comply with the applicable terms of any agreements between Servo Kinetics and its customer(s) to which Servo Kinetics provides the Supplies (as incorporated into products supplied to such customer(s)). Servo

Kinetics may in its discretion supply Seller with information regarding purchase orders from its customer(s). Seller will be responsible for ascertaining how such customer purchase order information affects Seller's obligations under the Order, and Seller will meet all such disclosed customer terms to the extent within Seller's control. By written notice to Seller, Servo Kinetics may elect to have the provisions of this Section prevail over any conflicting term between the Servo Kinetics and Seller.

**15. Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Servo Kinetics, Servo Kinetics' customers (both direct and indirect), and dealers and users of the products sold by Servo Kinetics and all of their respective officers, directors, employees, shareholders, affiliates, agents, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of an Order (including any part of these Terms). If Seller performs any work on Servo Kinetics' or Servo Kinetics' customer's premises or utilizes the property of Servo Kinetics or Servo Kinetics' customer, whether on or off Servo Kinetics' or Servo Kinetics' customer's premises: (a) Seller will examine the premises to determine whether they are safe for the requested services and will advise Servo Kinetics promptly of any situation it deems to be unsafe; (b) Seller's employees, contractors, and agents will comply with all regulations that apply to the premises and may be removed from Servo Kinetics' premises at Servo Kinetics' discretion; (c) Seller's employees, contractors, and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (d) to the fullest extent permitted by law, Seller will indemnify and hold Servo Kinetics and Servo Kinetics' customer, and their respective officers, directors, employees, shareholders, affiliates, agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Servo Kinetics, its customer, their respective agents, or any other person or entity to the extent arising from or in connection with Seller's work on the premises or Seller's use of Servo Kinetics' or Servo Kinetics' customer's property, except to the extent caused by Servo Kinetics' sole gross negligence.

**16. Insurance.** Seller will maintain, and require its subcontractors to maintain, the insurance coverage listed below or in additional amounts as may be reasonably requested by Servo Kinetics or Servo Kinetics' customer(s), in each case naming Servo Kinetics and its affiliates and customer(s) as "additional insured." Seller will furnish to Servo Kinetics a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 days of Servo Kinetics' written request. The certificate will provide that Servo Kinetics (and, if applicable, Servo Kinetics' customers) will receive 30 days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under the Order. Minimum coverage is as follows:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workers compensation	Statutory
Employer's liability	US\$500,000 / each accident, disease policy limit, disease each employee
Comprehensive general liability insurance, including contractual liability coverage	US\$5,000,000 / each occurrence, general aggregate, products & completed operations aggregate

Comprehensive automobile liability insurance

US\$1,000,000 / each occurrence,  
combined single limit

**17. Insolvency.** The Order may be terminated immediately by Servo Kinetics, without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Servo Kinetics for all costs incurred by Servo Kinetics in connection with any of the following, including, without limitation, attorneys' and other professional fees: (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a receiver or trustee is appointed for Seller; (e) Seller needs accommodations from Servo Kinetics, financial or otherwise, in order to meet its obligations under the Order; or (f) Seller executes an assignment for the benefit of creditors.

**18. Termination for Breach or Nonperformance.** Servo Kinetics may terminate all or any part of the Order, without liability to Seller, if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order; (b) fails or threatens not to deliver Supplies or perform services in connection with the Order; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Servo Kinetics specifying the failure or breach; or (d) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for Servo Kinetics or a merger, sale or exchange of stock or other equity interests that would result in a change in control of Seller. Seller will notify Servo Kinetics within ten days after entering into any negotiations that could lead to the situation specified in subsection (d) above, provided that upon Seller's request, Servo Kinetics will enter into an appropriate nondisclosure agreement related to information disclosed to Servo Kinetics in relation to such transaction.

**19. Termination.** In addition to any other rights of Servo Kinetics to cancel or terminate the Order, Servo Kinetics may at its option immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice of termination, and unless otherwise directed by Servo Kinetics, Seller will: (a) promptly terminate all work under the Order; (b) transfer title and deliver to Servo Kinetics the finished Supplies, the work-in-process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Servo Kinetics and that Seller cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in Seller's possession in which Servo Kinetics has an interest until disposal instruction from Servo Kinetics has been received; and (e) upon Servo Kinetics' reasonable request, cooperate with Servo Kinetics in transferring the production of Supplies to a different supplier. Upon termination by Servo Kinetics under this Section, Servo Kinetics will be obligated to pay only the following: (i) the Order price for all finished Supplies in the quantities ordered by Servo Kinetics that conform to the Order; (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Servo Kinetics under part (b) above; (iii) Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors to the extent directly caused by the termination; and (iv) Seller's reasonable actual cost of carrying out its obligation under subsection (d). Notwithstanding any other provision, Servo Kinetics will have no obligation for and will not be required to pay Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts exceeding those authorized in the Order, or general administrative burden charges from termination of the Order, except as otherwise expressly agreed in a separate Order issued by Servo Kinetics. Servo Kinetics' obligation upon termination under this Section will not exceed

the obligation Servo Kinetics would have had to Seller in the absence of termination. Seller will furnish to Servo Kinetics, within one month after the date of termination (or such shorter period as may be required by Servo Kinetics' customer), its termination claim, which will consist exclusively of the items of Servo Kinetics' obligation to Seller that are expressly permitted by this Section. Servo Kinetics may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim. Servo Kinetics will have no obligation for payment to Seller under this Section if Servo Kinetics terminates the Order or portion thereof because of a default or breach by Seller.

**20. Force Majeure.** Any delay or failure of either party to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order. The change in cost or availability of materials or components based on market conditions or supplier actions will not constitute force majeure. As soon as possible (but no more than one full business day) after the occurrence, Seller will provide written notice describing such delay and assuring Servo Kinetics of the anticipated duration of the delay and the time that the delay will be cured. During the delay or failure to perform by Seller, Servo Kinetics may at its option: (a) purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller; (b) require Seller to deliver to Servo Kinetics at Servo Kinetics' expense all finished goods, work-in-process and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Supplies from other sources in quantities and at a time requested by Servo Kinetics and at the price set forth in the Order. In addition, Seller at its expense will take all necessary actions to ensure the supply of Supplies to Servo Kinetics for a period of at least 30 days during any anticipated labor disruption or resulting from the expiration of Seller's labor contracts.

**21. Technical Information Disclosed to Servo Kinetics.** Seller agrees not to assert any claim against Servo Kinetics, Servo Kinetics' customers, or their respective suppliers, with respect to any technical information that Seller has disclosed or may disclose to Servo Kinetics in connection with the Supplies covered by the Order, except to the extent expressly covered by a separate written confidentiality or license agreement signed by Servo Kinetics or by a valid patent expressly disclosed to Servo Kinetics prior to or at the time of the Order.

**22. Proprietary Rights.** Seller warrants that the Supplies delivered under this Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Furthermore, Seller agrees:

(a) to defend, hold harmless and indemnify Servo Kinetics, its successors and customers against claims of direct or contributory infringement or inducement to infringe any proprietary right (including, without limitation, any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret) and against any resulting damages or expenses, including attorneys' and other professional fees, settlements and judgments, arising in any way in relation to Supplies procured or provided by Seller (including without limitation their manufacture, purchase, use or sale), including such claims where Seller has provided only part of Supplies, and Seller expressly waives any claim against Servo Kinetics that such infringement arose out of compliance with Servo Kinetics' specification;

(b) to waive any claim against Servo Kinetics, including, without limitation, any hold-harmless or similar claim, in any way related to a third party claim asserted against Seller or Servo Kinetics for infringement of any proprietary right (including, without limitation, any patent, trademark, copyright, moral, industrial design right or misuse or misappropriation of trade secret);

(c) that Servo Kinetics and its subcontractors and direct or indirect customers have the worldwide, irrevocable right to make, have made, sell, offer for sale, use, display, distribute (internally or externally), repair, reconstruct or rebuild, and to have repaired, reconstructed or rebuilt, Supplies delivered under the Order without payment of any royalty or other compensation to Seller;

(d) that manufactured parts based on Servo Kinetics' designs, drawings or specifications may not be used for Seller's own use or sold to third parties without Servo Kinetics' express written consent;

(e) to assign to Servo Kinetics each invention, discovery or improvement (whether or not patentable) that is conceived or first reduced to practice by Seller, or by any person employed by or working under the direction of Seller, in the performance of the Order;

(f) to promptly disclose in an acceptable form to Servo Kinetics all such inventions, discoveries or improvements and to cause its employees to sign any papers necessary to enable Servo Kinetics to obtain title to and to file applications for patents throughout the world; and

(g) to the extent that the Order is issued for the creation of copyrightable works, that the works will be considered "works made for hire," and to the extent that the works do not qualify as such, to assign to Servo Kinetics upon delivery thereof all right, title and interest in all copyrights and moral rights therein (including any source code).

Except as expressly agreed by Servo Kinetics in a signed writing, all Supplies or other deliverables provided under the Order (including without limitation computer programs, technical specifications, documentation and manuals) will be original to Seller and will not incorporate any intellectual property rights (including copyright, patent, trade secret or trademark rights) of any third party. Except as expressly agreed by Servo Kinetics in a signed writing, all Supplies or other deliverables provided under the Order, and all related intellectual property rights, are owned solely by Servo Kinetics. Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section. At no additional cost, Seller will grant Servo Kinetics a license to use any intellectual property owned by Seller that is necessary or incident to the reasonably intended use or application of the Supplies.

**23. Servo Kinetics' Property.** All tooling (including fixtures, gauges, jigs, patterns, castings, cavity dies and molds, with all related appurtenances, accessions, and accessories), packaging and all documents, standards or specifications, trade secrets, proprietary information and other materials and items furnished by Servo Kinetics, either directly or indirectly to Seller to perform the Order or for which Servo Kinetics has agreed to reimburse Seller (collectively, "Servo Kinetics' Property"), will become Servo Kinetics' property (including passage of title) as it is fabricated or acquired, and will remain Servo Kinetics' property regardless of payment. Servo Kinetics' Property will be held by Seller or by a third party, to the extent that Seller has transferred possession of Servo Kinetics' Property to a third party, on a bailment basis as a bailee-at-will. Seller bears the risk of loss of and damage to Servo Kinetics' Property. Seller is solely responsible for inspecting, testing and approving all Servo Kinetics' Property prior to any use, and Seller assumes all risk of injury to persons or property arising from Servo Kinetics' Property. Servo Kinetics' Property will be housed, maintained, repaired and replaced by Seller at Seller's expense in good working condition capable of producing Supplies meeting all applicable specifications, will not be used by Seller for any purpose other than the performance of the Order, will be deemed to be personally, will be conspicuously marked by Seller as the property of Servo Kinetics, will not be commingled with the property of Seller or with that of a third person, and will not be moved from Seller's premises without Servo Kinetics' approval. Seller will insure Servo Kinetics' Property with full fire and extended coverage insurance for its replacement value. Any replacement of Servo Kinetics' Property will become Servo Kinetics' property. Seller may not release or dispose Servo Kinetics' Property to any third



party without the express written permission of Servo Kinetics. Servo Kinetics will have the right to enter Seller's premises to inspect Servo Kinetics' Property and Seller's records regarding Servo Kinetics' Property. Only Servo Kinetics (or Servo Kinetics' affiliates) has any right, title or interest in Servo Kinetics' Property, except for Seller's limited right, subject to Servo Kinetics' sole discretion, to use Servo Kinetics' Property in the manufacture of Supplies. Servo Kinetics and its affiliates have the right to take immediate possession of Servo Kinetics' Property at any time without payment of any kind. Seller agrees to cooperate with Servo Kinetics if Servo Kinetics elects to take possession of Servo Kinetics' Property. Effective immediately upon written notice to Seller, without further notice or legal action, Servo Kinetics has the right to enter the premises of Seller and take possession of all of Servo Kinetics' Property. Seller expressly waives any right to additional notice or process and agrees to provide Servo Kinetics or its nominee(s) with immediate access to Servo Kinetics' Property. Seller grants to Servo Kinetics a limited and irrevocable power of attorney, coupled with an interest, to execute and record on Seller's behalf any notice financing statements with respect to Servo Kinetics' Property that Servo Kinetics determines are reasonably necessary to reflect Servo Kinetics' interest in Servo Kinetics' Property. At Servo Kinetics' request, Servo Kinetics' Property will be immediately released to Servo Kinetics or delivered by Seller to Servo Kinetics to any location designated by Servo Kinetics, in which case Servo Kinetics will pay Seller the reasonable costs of delivery. Seller waives, to the extent permitted by law, any lien or other rights that Seller might otherwise have on any of Servo Kinetics' Property, including but not limited to molder's and builder's liens.

**24. Seller's Property.** Seller, at its expense, will furnish, keep in good working condition capable of producing Supplies meeting all applicable specifications, and replace when necessary, all machinery, equipment, tools, jigs, dies, gauges, fixtures, molds, patterns and other items that are not Servo Kinetics' Property and that are necessary for the production of Supplies ("Seller's Property"). Seller will insure Seller's Property with full fire and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services similar to Supplies for other customers, including aftermarket customers, such goods or services will not incorporate any of Servo Kinetics' logos, trademarks, tradenames or part numbers. Seller will not disclose or imply in its marketing efforts that such goods or services are equivalent to those purchased by Servo Kinetics. Seller grants to Servo Kinetics an irrevocable option to take possession of and title to Seller's Property that is special for the production of Supplies under the Order upon payment to Seller of its net book value less any amounts that Servo Kinetics has previously paid to Seller for the cost of such items. This option does not apply if Seller's Property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

**25. Tooling; Capital Equipment.** This Section applies only to orders for tooling or capital equipment. Servo Kinetics will have access to Seller's premises, prior and subsequent to payment, to inspect work performed and to verify charges submitted by Seller against the Order or amendment. The price set forth in the Order or amendment will be adjusted so as to credit Servo Kinetics in the amount, if any, by which the price exceeds Seller's actual cost as verified. Seller further agrees to retain all cost records for a period of two years after receiving final payment of the charges. All tools and equipment are to be made to Servo Kinetics' specifications (or, where directed by Servo Kinetics, those of Servo Kinetics' customer). Any exception to such specifications must be stated in writing on the Order or otherwise in a signed writing by Servo Kinetics.

**26. Set-Off; Recoupment.** In addition to any right of set-off or recoupment provided by law, all amounts due to Seller will be considered net of indebtedness of Seller and its affiliates or subsidiaries to Servo Kinetics and its affiliates or subsidiaries. Servo Kinetics will have the right to set-off against or to recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Servo Kinetics or its affiliates or subsidiaries from Seller or its affiliates or subsidiaries. Servo Kinetics will provide Seller with a statement describing any offset or recoupment taken by Servo Kinetics.

**27. Information; Confidentiality.** Seller acknowledges that proprietary and confidential information will be received from Servo Kinetics or developed for Servo Kinetics under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information (including but not limited to any processes, drawings, special instructions, and specifications) of Servo Kinetics in strictest confidence, and further agrees not to disclose or permit disclosure to others, or use for other than the purpose of the Order, any proprietary and confidential information of Servo Kinetics.

(a) Seller agrees not to use any Servo Kinetics provided information for any purpose except to perform an Order and such information shall not be used with valves, pump, motors, or other hydraulic subassemblies or parts (“Hydraulic Units”) provided by third parties. Seller further agrees not to disclose or disseminate such information to third parties without the prior written consent of Servo Kinetics. Seller shall maintain data protection processes and systems sufficient to adequately protect Servo Kinetics’ information.

(b) Since unauthorized disclosure of any information provided by Servo Kinetics to Seller for any third party Hydraulic Units may cause immediate irreparable harm to Servo Kinetics for which monetary damages may be inadequate, Servo Kinetics shall be entitled to equitable relief in addition to monetary damages, including without limitation, a temporary and permanent injunction if Seller threatens or actually breaches its duty not to disclose or disseminate such information to third parties.

**28. No Publicity.** Seller will not advertise, publish or disclose to third parties (other than to Seller’s professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Servo Kinetics the Supplies covered by the Order or the terms of the Order, or use any trademarks or trade names of Servo Kinetics in any press release, advertising or promotional materials, without first obtaining Servo Kinetics’ written consent.

**29. Relationship of Parties.** Seller and Servo Kinetics are independent contracting parties and nothing in the Order will make either party the employee, agent or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Order, except as expressly provided in a written agreement signed by Servo Kinetics. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Servo Kinetics, and are not entitled to employee benefits or other rights accorded to Servo Kinetics’ employees. Servo Kinetics is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

**30. Conflict of Interest.** Seller represents and warrants that its performance of the Order will not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Seller further warrants that while the Order is in effect, Seller and those of its employees and contractors participating in the performance of the Order will refrain from any activities which could reasonably be expected to present a conflict of interest with respect to Seller’s relationship with Servo Kinetics or its performance of the Order.

**31. Non-Assignment.** Seller may not assign or delegate its obligations under the Order without Servo Kinetics’ prior written consent. In the event of any approved assignment or delegation authorized by Servo Kinetics, Seller retains all responsibility for Supplies, including all related warranties and claims, unless otherwise expressly agreed in writing by Servo Kinetics.

**32. Sales Tax Exemption.** The Supplies purchased under the Order are identified as industrial processing and may be exempt from sales taxes. In such case, the tax identification number or other exemption information are stated in the Order or are otherwise provided by Servo Kinetics.

**33. Governing Law; Jurisdiction; Arbitration.** All matters relating to Servo Kinetics' purchase of the Supplies will be construed in accordance with and governed by the laws of the State of Michigan and any conflict-of-laws provisions that would require application of another choice of law, are excluded.

(a) If any dispute arises between the parties, the parties will first consult with each other and undertake in good faith to settle all disputes between themselves. Failing settlement, such dispute will be referred to arbitration pursuant to this Section.

(b) Matters referred to arbitration will be (i) referred to a single arbitrator if the parties can agree on such arbitrator within seven (7) days after notice of one party to the other of its intentions to arbitrate or will be (ii) referred to three arbitrators as follows: after the expiration of such initial seven (7) day period, both Servo Kinetics and Seller will within seven (7) days appoint their respective arbitrator and the two (2) arbitrators thus chosen will together, within seven (7) days of their appointment, nominate a third arbitrator. If the two (2) arbitrators fail within such seven (7) days of their selection to select a third arbitrator, upon the written request of any party, the third arbitrator will be appointed by the American Arbitration Association. If a party fails to appoint an arbitrator as required, the arbitrator appointed will be the sole arbitrator of the matter referred to arbitration.

(c) The decision of the arbitrator(s) will be made within seven (7) days of the close of the hearing in respect of the arbitration (or such longer time as may be agreed to by the parties) and when reduced to writing and signed will be final, conclusive, and binding upon the parties hereto and may be enforced in any court, federal or state, having jurisdiction.

(d) The arbitration will be held in such location in the Detroit metropolitan area as will be mutually agreed upon, and will be conducted in accordance with the Commercial Rules of Arbitration of the American Arbitration Association.

(e) The arbitrator(s) will determine who will assume the expense of arbitration or the proportion of such expenses which each party will bear. Until final resolution of any dispute hereunder, Seller shall diligently proceed with the performance of this Order as directed by Servo Kinetics.

**34. Language; Severability; No Implied Waiver.** The parties acknowledge that it is their wish that these terms and all documents relating thereto be in the English language only. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect. The failure of either party at any time to require performance by the other party of any provision of the Order will not affect the right to require performance at any later time, nor will the waiver of either party of a breach of any provision of the Order constitute a waiver of any later breach of the same or other provision of the Order.

**35. Survival.** The obligations of Seller to Servo Kinetics survive termination of the Order, except as otherwise provided in the Order.

**36. Entire Agreement; Modifications.** Except as described in Section 1, the Order, together with the attachments, exhibits, supplements or other terms of Servo Kinetics specifically referenced therein, constitutes the entire agreement between Seller and Servo Kinetics with respect to the matters contained

in the Order. The Order may only be modified by a written amendment executed by authorized representatives of each party or, for changes within the scope of Section 9 of these Terms, by a purchase order amendment issued by Servo Kinetics. Servo Kinetics may modify these Terms with respect to Orders at any time by posting revised Terms to its web site at <http://www.servokinetics.com/home/vendor/Non-GovernmentVendor.html> , and such revised Terms will apply to all Orders currently issued and issued thereafter.